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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA,) CASE NO. CR 12-00887 EJD
14 Plaintiff,)
v.) STIPULATION AND [PROPOSED] PROTECTIVE
15 PATRICIA DELATORRE, et al.) ORDER REGARDING DISCOVERY MATERIALS
16 Defendants.)
17)
18)

19 With the agreement of the parties and defendants' consent, the Court enters the following Order.

20 The Defendants in these criminal proceedings have issued a subpoena to the Department of
21 Homeland Security, U.S. Citizenship and Immigration Services, San Francisco Asylum Office, seeking
22 production of immigration file relating to SHR, a witness in the criminal proceeding. Much of the
23 immigration file includes personal identifying information of a purported victim and witness to the
24 alleged crime. In addition, the file contains asylum related information that is protected from disclosure
25 by 8 C.F.R. § 208.6. On July 8, 2014, the court ordered the issuance and service of the subpoena. The
26 government agrees to provide a copy of the requested file, hereinafter referred to as the
27
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1 IMMIGRATION FILE or "subject material," to defense counsel pursuant to a protective order. Such
2 materials are deemed produced pursuant to the following restrictions:

3 1. Except when actively being examined for the purpose of the preparation of the
4 defense of defendant, the IMMIGRATION FILE shall be maintained in a safe and secure drawer,
5 cabinet, or safe or password-protected electronic device (e.g., computer, memory stick), which is
6 accessible only to defense counsel, members of his or her law firm who are working with him or her to
7 prepare defendant's defense, and his or her investigator(s). Defense counsel, members of his or her law
8 firm, defendant, and the investigator(s) shall not permit any person access of any kind to the
9 IMMIGRATION FILE except as set forth below.

10 2. The following individuals may examine the IMMIGRATION FILE for the sole
11 purpose of preparing the defense of defendant and for no other purpose:

12 a) counsel for defendant;
13 b) members of defense counsel's law office who are assisting with the
14 preparation of defendant's defense;
15 c) defendant, but only in the presence of defense counsel or another
16 authorized person listed in this paragraph (defendant may not take or
17 maintain the IMMIGRATION FILE or copies thereof); and
18 d) investigators retained by defendant to assist in the defense of this matter.

19 If defense counsel determines that additional persons are needed to review the
20 IMMIGRATION FILE, he or she must obtain a further order of the Court before allowing any other
21 individual to review the materials.

22 3. A copy of this Order shall be maintained with the IMMIGRATION FILE at all
23 times.

24 4. All individuals other than defense counsel and defendant who receive access to
25 the IMMIGRATION FILE, prior to receiving access to the materials, shall sign a copy of this Order
26 acknowledging that:

27 a) they have reviewed the Order;
28 b) they understand its contents;

- 1 c) they agree that they will only access the IMMIGRATION FILE for the
- 2 purposes of preparing a defense for defendant; and
- 3 d) they understand that failure to abide by this Order may result in sanctions
- 4 by this Court.

5 Counsel for defendant shall either: (1) send signed copies of the Order to counsel
6 for the United States; or (2) file signed copies of the Order, ex parte and under seal. The United States
7 shall have no access to the signed copies filed under seal without further order of the Court.

8 5. No other person shall be allowed to examine the IMMIGRATION FILE without
9 further order of the Court. Examination of the IMMIGRATION FILE shall be done in a secure
10 environment which will not expose the materials to other individuals not listed above.

11 6. The IMMIGRATION FILE may be duplicated to the extent necessary to prepare
12 the defense of this matter. Any duplicates will be treated as originals in accordance with this Order.

13 7. If the IMMIGRATION FILE is attached to any pleadings or other court
14 submissions, the IMMIGRATION FILE and any pleadings or submissions referencing those materials
15 shall be filed or lodged under seal, or the personally identifying information shall be redacted, as set
16 forth in Federal Rule of Criminal Procedure 49.1.

17 8. Counsel for the defendant shall retrieve and maintain or destroy the
18 IMMIGRATION FILE (and any duplicate copies of the same) disclosed pursuant to paragraph 2 above
19 within fourteen calendar days after any one of the following events, whichever is latest in time, occurs:
20 dismissal of all charges against defendant; defendant's acquittal by court or jury; or the conclusion of
21 any direct appeal. Once the IMMIGRATION FILE (and any duplicate copies of the same) are retrieved,
22 Counsel for the defendant shall not disclose the IMMIGRATION FILE to anyone without further order
23 of the Court permitting such disclosure.

24 9. After the conclusion of proceedings in the district court or any direct appeal in the
25 above-captioned case, the United States will maintain a copy of the IMMIGRATION FILE. The United
26 States will maintain the IMMIGRATION FILE until the time period for filing a motion pursuant to 28
27 U.S.C. § 2255 has expired. After the statutory time period for filing such a motion has expired, the
28 United States may destroy the IMMIGRATION FILE. In the event defendant is represented by counsel

1 and files a motion pursuant to 28 U.S.C. § 2255, the United States will provide that counsel with a copy
2 of the IMMIGRATION FILE under the same restrictions as trial and direct appeal defense counsel.
3 Defendant's attorney in any action under 28 U.S.C. § 2255 shall return the same materials fourteen
4 calendar days after the district court's ruling on the motion or fourteen calendar days after the
5 conclusion of any direct appeal of the district court's denial of the motion, whichever is later.

6 By signing below, defense counsel acknowledges the terms of this Protective Order and undertakes
7 the obligation to disclose the existence and terms of this Order to any other person who is authorized to
8 receive the subject material, including the defendant, investigators, staff, and subsequent attorneys
9 authorized to represent the defendant.

10 MELINDA HAAG
11 United States Attorney

12 Dated: October 9, 2014

/s/ _____
13 JEFF SCHENK
14 Assistant United States Attorney

15
16 Dated: October 9, 2014

/s/ _____
17 PETER GOLDSCHEIDER
18 Counsel for defendant PATRICIA DELATORRE

19 IT IS SO ORDERED that disclosure of the above-described materials shall be restricted as set
20 forth above.

21
22 DATED: October 9, 2014


23 HONORABLE PAUL S. GREWAL
24 United States Magistrate Judge